

**MINUTES**  
**CITY COUNCIL AD HOC COMMITTEE ON ETHICS**  
**TENTH FLOOR CONFERENCE ROOM**  
**WEDNESDAY, SEPTEMBER 21, 1994 -- 730 P.M.**

**Meeting was called to order at 3:35 p.m. jointly with the Board of Ethics.**

**MEMBERS PRESENT:**

Councilmember Rick Lilly, Chair  
Councilmember Ellen Beal, Vice-Chair  
Councilmember Sandy Allen, Member

**OTHERS PRESENT:**

Don Cook, Board of Ethics  
Joyce Meissner, Board of Ethics  
John Mertz, Board of Ethics  
Donna Collins, Citizen  
Dick Collins, Citizen  
Russell Smith, Citizen  
Ken Vaughn, CCSL  
Lloyd Teets, CCSL  
Mark Eggleston, CCSL  
Tim Lewis, CCSL  
Pat Thor, Citizen  
Steve Sawyer, Citizen  
Jackie Porter Lilly, Citizen  
Harold Leeman, CCSL  
Paul Scott, CCSL  
Tina Gallante, Council Staff

**APPROVAL OF MINUTES**

The minutes of the August 10, 1994, meeting were held.

## **ACTION/DISCUSSION**

### **Discussion Regarding Continuation of Investigation on Early Retirement:**

#### **Resolution from Ethics Board Regarding list of Needs for the Continuation and Completion of Their Investigation**

Councilmember Lilly began by indicating this meeting was to attempt to move the City forward in the investigation of the Early Retirement Program. New requests have been made from the Ethics Board to the Council that needs response along with a resolution from Councilmember Allen and a motion made at the September 15, 1994, Committee of the Whole meeting that the *"Ad Hoc Committee on Ethics meet with the City Attorney to establish the process that Council should follow in conducting this investigation . . ."* He believes the citizens of Lansing want an understanding of how the plan was done, how it came about and for the Council to take corrective measures to ensure that it does not happen again and if there is evidence of criminal activity that prosecution is held.

He then heard from the public.

Mr. Teets spoke on behalf of CCSL urging the Council to grant the Board of Ethics all the powers necessary to continue their investigation into the Early Retirement Plan. He also urged that if an independent investigator is selected that the person submit a full disclosure of himself/herself and if any campaign contributions were made by them to anyone involved in the Early Retirement Plan.

Mr. Mertz then addressed the Committee first referring back to the Board of Ethics Opinion #20 which recommended to the City Council that they engage special legal counsel to advise the Board whether it could investigate and refer matters for prosecution. At the time the Board wanted to specifically review actions of specific individuals. In recommendation #3 the Board asked that if violations were found prosecution could be done or other legal remedies. He referenced attempts from certain individuals trying to stop the Board's attempt into the investigation and the fact that because there are still employees in the City who may need to be investigated there may problems that are associated with the present City Attorney's involvement. He stressed that the Board continues to have focus on members who are currently on the Council, so asking the Council to grant the Board resources to continue the investigation may be difficult. He requested that someone from the Lansing Police Department be allowed to assist the Board.

He emphasized that the Board wants to make sure that no person who has not done something wrong gets falsely accused. But he wants this investigation to be done first rate so an attorney is going to be needed to assist someone. He reminded the Committee the statute of limitations will be running out.

He asked the Committee to allow the Board to select itself an attorney, as he feels it is important the Board make the selection, and assign one or more investigators.

Councilmember Lilly commented that he would like the resolution to be put in the form of those items the Council has the authority to do, referencing the fact the Board wants an investigator from the Lansing Police Department. Mr. Mertz responded that they are more familiar with City law and more able to deal with the issue effectively. With respect given to the State Police, he indicated his father-in-law is a State Police Lieutenant, and they have been asked once before and were not interested. Councilmember Lilly stated he does not believe the Council can direct the Lansing Police Department to assign an investigator, as that would be an Administrative function. The Council could request it.

Councilmember Lilly referenced the fact the Board does not request a delegation of the Council's subpoena power. Mr. Mertz explained that the ordinance requires that the Board notify the people they are investigating. They utilize the power of inquiry and expect the people asking to appear to give the information needed. The Board found that to be extremely reliable.

Councilmember Beal questioned if immunity could be granted. In terms of the resolution, does the Board want the State Police or is the Lansing Police preferred. Does the Board feel there is a possibility there may be an issue with one of the Assistant City Attorneys there may be some kind of conflict with the City Attorney's Office.

Mr. Mertz responded that he felt once the City Attorney himself changed, that made a major difference in how things worked. Mr. Smiertka has been a valuable assistance to the Board. It is whether he is comfortable with the issue and the individual involved. He would prefer to work with the City Attorney. If they have to go outside, he would recommend the Board select the attorney.

Mr. Smiertka reminded the Committee there is an ongoing litigation in the Federal Court that causes him concern that if the City Attorney's Office is involved in an investigation they may draw concern from the Federal Judge, referencing free discovery. The opposing counsel in the McKane/Blair case may object. Also, if after the investigation is complete there could be some referrals to the City Attorney's Office. He would rather have his office removed from the process that develops those facts that may cause prosecution. He added that there

may be discussion on the procedures used in the City Attorney's Office prior to January 1, 1994, and if so he would like no appearance of a problem from his office with respect to those inquiries. For those reasons he strongly feels the City Attorney's Office should not be involved as advisors to the investigation.

Councilmember Lilly requested that Mr. Smiertka provide those reasons to the Council in writing.

Councilmember Beal questioned how much it may cost for an attorney, as we have spent a lot of money already. Mr. Mertz commented it is hard to estimate because it is dependent on a number of factors. In response to the State Police vs Lansing Police question, he restated the State Police has been asked before and did not want anything to do with it. Lansing Police is more knowledgeable in terms of City Charter, cheaper, faster and a better way to go.

Councilmember Allen stated she is in favor of having the Ethics Board continue the investigation and does she does not want to "tie their hands" at any point. She suggested having someone assist the Board along with LPD, maybe a former State Police person or former Sheriff.

Councilmember Lilly stated he would like to go through the resolution and set it in a form that is appropriate.

#### **Point #1**

Mr. Smiertka suggested it should read 'law enforcement investigator or agency' and not restrict it to the Lansing Police Department. Councilmember Allen suggested investigator be plural in case the Board needs more than one assistant. Councilmember Lilly commented that may be tough to get through the full Council but he would go along with it. The Committee also suggested eliminating the time frame.

#### **Point #2**

Councilmember Lilly suggested putting something in that the Finance Department work with the Board of Ethics. Mr. Smiertka explained that in Point #2 the Board is looking for actual services. Mr. Mertz agreed, adding that the Board wants the department to do things for them and spend time with the Board, which is obviously City money. Councilmember Lilly suggested filling the half-time Internal Audit position, which has the funds set aside for it, find the other half to fund it for a full-time position, and assign that person specifically to the Board of Ethics for the period of the investigation, to be under Mr. Koessel's authority. The Committee heard from Mr. Rubley who felt that was a good idea; however, the Finance Department would still be involved and asked that first hand knowledge of the request be given

directly to the department, suggesting someone be assigned to attend the Board's meetings.

### **Point #3**

Councilmember Lilly commented there is an Office Space Committee going on and questioned if there is any office space available. The Committee agreed to request the Administration to help secure office space for the Board.

### **Point #4**

The Committee agreed to allow the Board of Ethics, under the authority of the City Council, to make inquiries of City employees and have access to records and files of all offices and departments. Councilmember Lilly requested the provision within the Code is followed, in that they will have access to records and files.

### **Point #5**

Mr. Smiertka pointed out there is ample law that the law firms and the attorney-client relationship, as it existed back in 1992 and 1993 continues to the new Administration and Council so there can be no claim there was a prior attorney-client privilege that had to be waived. In this matter, he feels this is so important to the City he would suggest it be waived and available to the Ethics Board. He suggested the waiver be handled on a case by case basis. Councilmember Lilly commented he would like those particular documents going through the City Attorney's Office first. Mr. Smiertka suggested specific wording for this item. The Committee agreed to have Mr. Smiertka work out specific wording.

### **Point #6 and #7**

Councilmember Lilly commented the Board of Ethics is asking for \$25,000 for supplies, overtime costs for City Clerk's Office, salary requirements for the investigator, a court stenographer, etc. He suggested the supplies, overtime costs, and stenographer be placed within the City Clerk's budget and the money be transferred into a specific line item. Mr. Rubley indicated he is not opposed to it; however, he would suggest an alternative having the funding for this investigation all in one place. He recommends the Board of Ethics have a series of accounts, but that the Council decide who has the authority to expend from them. He will work it out and bring it through the Ways and Means Committee.

The Committee discussed the fact that an outside attorney will be needed to assist in the investigation efforts. Mr. Smiertka suggested that enough money has not been allocated. It was clear to the Committee enough money was not allocated.

COUNCILMEMBER BEAL MOVED TO APPROVE THE POINTS DISCUSSED AND TO ASK THE CITY ATTORNEY TO WRITE A LETTER APPROVING THE OUTSIDE ATTORNEY FOR THE ETHICS BOARD AND THAT BE ATTACHED TO THE RESOLUTION AND THAT THE RESOLUTION CONTAIN A POINT THAT THE ETHICS BOARD BE AUTHORIZED TO RETAIN THEIR OWN LEGAL COUNSEL.

Mr. Smiertka stated that he really does not believe there is enough money allocated. The Committee indicated they simply want to get the accounts set-up first.

The Committee wanted a resolve clause within the resolution stating that all City purchasing policies and budget monitoring policies will be followed.

Councilmember Allen stated she would still like the amount raised, because she does not want the Ethics Board to have to come back to the Council and ask for more money. The Committee had no problem with raising the amount.

ON MOTION TO APPROVE THE 7 ITEMS DISCUSSED. ON MOTION CARRIED, 3-0.

**Resolution from Councilmember Allen Appropriating the Board of Ethics \$26,000**

Councilmember Allen withdraws her resolution.

**Letter from Marilyn Slade Regarding Administrative Needs to Conclude the Board of Ethics Early Retirement Investigation**

Ms. Slade stated her concerns were incorporated into the resolution discussed today.

**Other**

The Committee heard from Mr. Teets and Mr. Vaughn.

**ADJOURN:**

Meeting was adjourned at 9:25 p.m.

**Respectfully submitted,**

**Tina M. Gallante  
Legislative Secretary**

**Approved by the Committee.**

**Signed by:**

*for*   
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**COUNCILMEMBER RICK LILLY, CHAIR**

Appropriate documents attached.